

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	MDL No. 1456
IN RE: PHARMACEUTICAL INDUSTRY)	Master File No. 1:01-CV-12257-PBS
AVERAGE WHOLESALE PRICE)	Sub-Category Case No. 1:08-CV-11200
LITIGATION)	
_____)	
)	
)	Judge Patti B. Saris
THIS DOCUMENT RELATES TO)	
<i>United States ex rel. Linnette Sun and Greg</i>)	
<i>Hamilton, Relators</i>)	
<i>v.</i>)	
<i>Baxter Hemoglobin Therapeutics and Baxter</i>)	
<i>International, Inc.</i>)	
_____)	

**MOTION OF RELATORS LINNETTE SUN AND GREG HAMILTON
TO LIFT STAY ON DISCOVERY TO PERMIT DEPOSITION
OF MARKETING BUREAU RESEARCH AND TO CONTINUE
DEADLINE FOR RELATORS' OPPOSITION TO BAXTER'S MOTION TO DISMISS**

Relators Linnette Sun and Greg Hamilton ("Relators"), by and through their attorneys, respectfully request that the Court lift the current stay on discovery to permit relators to take the deposition of Marketing Research Bureau ("MRB") and to continue the date on which relators' opposition to the motion to dismiss filed by Baxter International, Inc. ("Baxter") This motion is made on the grounds that good cause exists to permit relators to take the deposition of MRB and to continue the due date for relators' opposition based on the following:

1. On June 22, 2009 this court issued a Case Management Order("CMO"). The CMO set a hearing date of October 22, 2009 for a Motion To Dismiss to be filed by Baxter, and set a briefing schedule with respect to that motion. According to the briefing schedule, Baxter was to file its Motion To Dismiss by August 15,

2009. Plaintiffs' opposition was due on September 15, 2009 and defendants' reply on September 30, 2009. The CMO also included a stay on all discovery.

2. Baxter filed its Motion To Dismiss on August 14, 2009;
6. Baxter's motion relies on reports distributed by MRB in support of its argument that Baxter's fraudulent conduct has previously been publicly disclosed.
7. In order to demonstrate that the MRB reports do not constitute a "public disclosure," relators need to take the deposition of MRB in order to be able to respond to this public disclosure argument;
8. Given that MRB is located in Connecticut and relators' attorneys are in California, there is insufficient time to proceed with that deposition and to be able to use the testimony from that deposition in its opposition to Baxter's motion to dismiss;
9. In the interests of justice relators should be permitted to take the deposition of MRB and be given sufficient time following the completion of that deposition in order to use the testimony from that deposition in its opposition.

A proposed order is attached for the court's convenience.

Relators have engaged in a good faith effort to resolve and/or narrow the issues in this motion and therefore have complied with Local Rule 7.1(a)(2), as evidenced by the August 20, 2009 email from Lauren John Udden to Merle DeLancey [Exhibit A attached to the Memorandum in support of this motion] and Andrew Jackson's August 25, 2009 letter to Lauren John Udden [Exhibit B.]

Respectfully submitted.

Dated: August 31, 2009

/s/ Lauren John Udden
Lauren John Udden (CA SBN 83118)
15 West Carrillo Street
Suite 209
Santa Barbara, California 93101
Telephone: (805) 879-7544
Facsimile: (805) 560-0506

/s/ Mark Allen Kleiman
Mark Allen Kleiman (CA SBN 115919)
2907 Stanford Avenue
Venice, California 90292
Telephone: (310) 306-8094

Counsel for Relators Linnette Sun and
Greg Hamilton

CERTIFICATE OF SERVICE

I hereby certify that I, Pamela R. Savoie, caused a true and correct copy of the foregoing **MOTION OF RELATORS LINNETTE SUN AND GREG HAMILTON TO LIFT STAY ON DISCOVERY TO PERMIT DEPOSITION OF MARKETING BUREAU RESEARCH AND TO CONTINUE DEADLINE FOR RELATORS' OPPOSITION TO BAXTER'S MOTION TO DISMISS** to be delivered to all counsel of record by electronic service via LexisNexis File & Serve for posting and notification to all parties.

Dated: August 31, 2009

/s/ Pamela R. Savoie

Pamela R. Savoie

Legal Assistant

Law Office of Mark Allen Kleiman

2907 Stanford Avenue

Venice, CA 90292

310-306-8094

310-306-8491 (fax)